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10 *Attorneys for Plaintiff*

11 IN THE UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 JACKSON CONTRACTOR GROUP,
14 INC., a Montana corporation,
15 Plaintiff,

16 vs.

17 TRAVELERS CASUALTY AND
18 SURETY COMPANY OF AMERICA,
19 a Connecticut corporation,

20 Defendant.
21
22
23
24

NO. 2:22-cv-00178

COMPLAINT FOR DAMAGES

25 COMPLAINT FOR DAMAGES - 1
26

Dunn&Black

A Professional Service Corp.
111 North Post, Suite 300
Spokane, WA 99201

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PARTIES, JURISDICTION & VENUE

1
2 1. Plaintiff Jackson Contractor Group, Inc., (“Jackson”) is a Montana
3 corporation, doing business in Spokane County, Washington. Jackson is
4 registered as a general contractor with the Washington State Department of Labor
5 & Industries, license no. JACKSCG919RA. Jackson has done all things required
6 of it to maintain this lawsuit.
7

8 2. Defendant, Travelers Casualty and Surety Company of America
9 (“Travelers”) is a Connecticut corporation with its principal place of business in
10 Hartford, Connecticut. Travelers is authorized to do business in and is doing
11 business as an insurance company in Washington State. Travelers is registered
12 with the Washington Office of the Insurance Commissioner license number 10.
13

14 3. The United States District Court for the District of Eastern
15 Washington has jurisdiction over this matter pursuant to, but not limited to, 28
16 U.S. Code § 1332 in that Plaintiff has diversity of citizenship from each of the
17 defendants and the amount in controversy exceeds \$75,000.00 exclusive of
18 interest, costs, and attorney fees.
19
20

21 4. Defendant Travelers is licensed to do business and does business as
22 an insurance company issuing insurance policies and bonds within the Eastern
23 District of Washington. Therefore, venue is proper pursuant to 28 U.S.C. § 1391.
24

25 COMPLAINT FOR DAMAGES - 2
26

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FACTS

5. Jackson incorporates by reference the allegations set forth above, as if set forth fully herein.

6. Jackson entered into a contract with Schweitzer Mountain Properties, LLC to develop the New Schweitzer Mountain Hotel and Resort (the “Project”).

7. On February 9, 2021, Jackson executed a Subcontract Agreement (the “Subcontract”) with Flawless Walls, LLC (“Flawless”) to perform work on the Project.

8. Per the Subcontract, Flawless was obligated to perform certain scopes of work including Rough Carpentry and to provide certain materials for the Project as described in the Subcontract, including without limitation, Appendix 1 of the Subcontract. A true and correct copy of the Subcontract is attached hereto as **Attachment A** and is fully incorporated herein by reference.

9. Flawless obtained a payment bond and a performance bond numbered 107389012 (“the Bonds”) from Travelers covering Flawless’ payment and performance of the Subcontract work on the Project. True and correct copies of the Bonds are attached hereto as **Attachment B** and are fully incorporated herein by reference.

1 10. Travelers bound itself to Jackson under the Bonds in the sum of
2 \$618,187 conditioned upon and subject to Flawless' full performance under the
3 Subcontract.

4 11. The Subcontract specifically required that Flawless comply with all
5 terms and conditions of the main contract.
6

7 12. The Subcontract provides that if Flawless fails or becomes unable to
8 prosecute timely or satisfactorily complete the subcontract work, Jackson may,
9 without prejudice to any other rights or remedies, provide any labor and materials
10 which in Jackson's opinion are necessary to prosecute and satisfactorily complete
11 the work by any method Jackson deems expedient, including the hiring of another
12 subcontractor. In such event, Flawless shall bear and be responsible for all
13 associated costs.
14
15

16 13. Flawless repeatedly fell behind in completing its work and
17 continually failed to timely prosecute its work or to supply sufficient properly
18 skilled workmen to adhere to the Project schedule.
19

20 14. On May 11, 2021, Jackson provided Flawless with a Notice of
21 Supplementation pursuant to Article R of the Subcontract due to Flawless'
22 inability to meet the Project schedule.
23
24

25 COMPLAINT FOR DAMAGES - 4
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1 15. Jackson and Flawless executed a number of deductive change orders
2 reflecting Jackson's supplementation of Flawless' work on the Project.

3 16. On or about August 26, 2021, Flawless notified Jackson that it was
4 going "*out of business*" and ceased all work on the Project.
5

6 17. On December 8, 2021, Jackson provided a deductive change order
7 in the amount of \$787,865.11 to Flawless for the costs incurred relative to
8 Jackson's supplementation of Flawless' Subcontract work. Jackson also provided
9 written notice to Flawless that the remaining balance of \$34,710.71 owed to
10 Flawless would be retained by Jackson as an offset to this overage.
11

12 18. On March 2, 2022, Jackson sent an additional Demand for Payment
13 and Breach of Subcontract letter to Flawless though Boone Karlberg, P.C.
14

15 19. By failing to meet its obligations to timely prosecute the work and
16 provide skilled workmanship, failing to finish work on the Project, and failing to
17 reimburse Jackson for the costs Jackson incurred in supplementing Flawless'
18 Subcontract work, Flawless did not perform the construction work that was
19 required to be performed under the Subcontract.
20

21 20. On March 25, 2022, Jackson sent a demand for payment pursuant to
22 the Bonds to Travelers.
23
24

1 21. On April 25, 2022, Travelers notified Jackson that it was refusing to
2 make payment under the Bonds.

3 22. As of the date of this filing, Travelers still has refused to issue any
4 payment under the Bonds.

5 23. Flawless' failure to perform its construction work in breach of the
6 Subcontract has resulted in significant additional time, work and expense to
7 complete the Project, thereby causing Jackson to suffer damages in an exact
8 amount to be proven at trial but in excess of \$700,000, plus interest, attorney fees
9 and costs.
10

11 24. Travelers has failed to make payment to Jackson for all amounts
12 owed under the Subcontract in an exact amount to be proven at trial but in excess
13 of \$700,000, plus interest, attorney fees and costs.
14

15
16 **FIRST CAUSE OF ACTION**
17 **(Breach of Contract/Breach of Good Faith and Fair Dealing)**

18 25. Jackson incorporates by reference the allegations set forth above, as
19 if fully set forth herein.

20 26. Jackson and Flawless entered into a written Subcontract agreement
21 for construction services described in the Subcontract documents.
22

23 27. Jackson has fully complied with and performed all of its
24 responsibilities and obligations to Flawless under the Subcontract.

25 COMPLAINT FOR DAMAGES - 6
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1 28. Flawless failed to perform the specific requirements under the terms
2 of the Subcontract.

3 29. The Subcontract required Flawless to obtain a payment bond and
4 performance bond securing its work on the project. Flawless obtained said Bonds
5 from Travelers and named Jackson as the Obligee on each.
6

7 30. As a result, Travelers owes a contractual duty to Jackson and is
8 obligated to issue payment to Jackson pursuant to the Bonds.
9

10 31. By refusing to do so, Travelers has breached the express and implied
11 obligations under the Bonds, including but not limited to the implied covenant of
12 good faith and fair dealing.

13 32. As a direct and proximate result of Travelers' breaches, Jackson has
14 incurred damages in an amount to be proven at trial, plus interest, attorney fees
15 and costs.
16

17 **SECOND CAUSE OF ACTION**
18 **(Performance Bond Claim)**

19 33. Jackson incorporates by reference the allegations set forth above, as
20 if fully set forth herein.

21 34. Jackson's claim for damages, resulting from Flawless' breach of the
22 Subcontract, is secured by the Bonds issued by Travelers.
23

1 2. That an order be entered foreclosing against the Bonds issued by
2 Travelers in an amount to be proven at trial.

3 3. That Jackson be awarded actual attorney fees and costs incurred to
4 obtain judgment against Travelers pursuant to the Subcontract and applicable law.
5

6 4. That Jackson be awarded pre-judgment interest.

7 5. For such other and further relief as the Court deems proper.
8

9
10 DATED this 26th day of July, 2022.

11 DUNN & BLACK, P.S.
12

13 /s/ Richard T. Wetmore

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